law, however, it does not necessarily make a contract invalid that it does away with competition.[4]

In the second place, the courts could say that the act applies to every contract in restraint of trade, reasonable or unreasonable. Whatever may be the state of the cases as decisions on the facts, it is not to be denied that that is the result of the language and reasoning of the opinions.[5] That it was an unfortunate view to take, the decisions of the courts are already demonstrating. When confronted by an ordinary factor's agreement in what would seem obvious restraint of interstate commerce they have held it good, attempting to draw distinctions between direct and incidental restraint, which, if they mean anything, mean the application of the old common law test. Such was the case of the recent decision in *Phillips* v. *Iola Portland Cement Co.*, 125 Fed. Rep. 593 (C. C. A., Eighth Circ.). Here it was agreed between a vendor in Kansas and a vendee in Texas that the latter would not compete with his vendor anywhere beyond the boundaries of the state of Texas. In holding the agreement not within the provisions of the Sherman Act the court said the law must have a reasonable interpretation, and in trying to reach this interpretation it laid down a test of validity that might well have been adopted by a court applying the common law doctrine of reasonableness.

No one, of course, can foretell what the final outcome of the effort to fix the meaning of the Act will be. But one or two things are fairly clear. The courts will prove unwilling to adhere in all cases to the extreme language of the decisions which would make invalid any and every contract in restraint of interstate trade.[6] It is likely, moreover, that the discretion they exercise will follow more and more the old common law test of reasonableness with regard to all parties concerned, for there is no sound basis for discretion except reasonableness.

LIABILITY OF RAILROAD COMPANY TO PASSENGERS FOR NEGLIGENCE OF CONNECTING COMPANY. — There is much conflict among the authorities as to whether a carrier selling a ticket for a journey to begin on its own line and to terminate on a connecting line is liable for injuries received by the passenger on the connecting line. In England it is held that the carrier is so liable,[1] but most American courts take the view that it is not,[2] unless special circumstances are found from which it may be inferred that the carrier selling the ticket assumes responsibility for the other's negligence. But there is no doubt that a carrier is subject to such liability, if it actually so contracts; power to enter into contracts for the safe carriage of passengers on connecting lines is implied in the charter of every railroad company, so that these agreements are not *ultra vires*.[3] Furthermore, a carrier may sometimes be held liable for an injury received on a connecting line by a passenger who began his journey on that line, but who held a

---

[4] Nordenfelt *v.* Maxim Nordenfelt, etc., Co., [1894] A. C. 535.
[5] U. S. *v.* Trans-Missouri Freight Association, *supra*.
[6] See discussion of Northern Securities Co. *v.* U. S. *ante*, p. 474.

[1] Great Western Ry. Co. *v.* Blake, 7 H. & N. 987.
[2] Knight *v.* Portland, Saco, & Portsmouth R. R. Co., 56 Me. 234; *contra*, Little *v.* Dusenberry, 46 N. J. Law 614.
[3] Wheeler *v.* San Francisco & Alameda R. R. Co., 31 Cal. 46.

through ticket to a point on the line of the carrier against which the action is brought. If there is a traffic agreement between two connecting carriers, whereby the net profits of all joint business are to be divided in a fixed proportion, without regard to the amount actually earned on the line of either, this is said to create a partnership, as between the carriers and third persons, so that a passenger holding a through ticket may sue either carrier for any injury he receives on either part of the line.[4]

This was the situation in a late case in the Circuit Court of Appeals for the second circuit. Two railroads were operated as one system, the profits of the joint business being divided according to mileage. It was held that a partnership as to joint traffic had been created, and the representative of a passenger who began his journey and was killed on the road of one of the companies, but who held a ticket to a point on the line of the other, was allowed to maintain an action against the second company. *Lehigh Valley R. R. Co.* v. *Dupont*, 30 N. Y. L. J. 1925 (C. C. A., Second Circ.). It is evident that, on the principles stated above, the defendant would have been liable if the two carriers had been natural persons. As it was, there seems, at first sight, to be much force in the objection that the companies had no power to enter into a partnership, so that no action based on the existence of such a partnership could be maintained. The law generally looks with great disfavor on anything in the nature of a partnership between corporations.[5] Accordingly, a contract between two railroad companies to the effect that the net profits of their whole business, both local and joint, shall be divided in a fixed proportion, is held *ultra vires*.[6] But if, as in the present case, the division of net profits is confined to the joint business, each company taking all the receipts and paying all the expenses of its local business, the contract is not objectionable.[7] This arrangement certainly seems to be as much a partnership as the other: in upholding it, an exception is made to the general rule. But it is not an exception without reason: it is so clearly to the public advantage that connecting railroads be operated as one system that it is not difficult to imply a power to form partnerships for this purpose from the general words of the charter.

EFFECT OF THE REGISTRY SYSTEM ON THE DOCTRINE OF ESTOPPEL BY DEED. — In the United States it has long been settled law that where a conveyance is made with covenants of warranty by one who later gets in the title, the after-acquired title inures by estoppel to the benefit of the grantee.[1] If this estoppel merely creates an equity against the grantor, subsequent purchasers for value without notice should be protected; but if it actually passes the title to the original grantee, at common law later purchasers would be without remedy. Under the registry system, however, a different result may well be reached. Statutes requiring a record of conveyances usually provide that instruments of title shall be of no effect against subsequent grantees and incumbrancers if not recorded. In interpreting these statutes the question arises as to how far the record is effective against the later pur-

---

[4] Champion *v.* Bostwick, 18 Wend. (N. Y.) 175.
[5] Mallory *v.* Hanaur Oil Works, 86 Tenn. 598.
[6] Burke *v.* Concord R. R. Corp., 61 N. H. 160.
[7] Swift *v.* Pacific Mail S. S. Co., 106 N. Y. 206.

[1] Somes *v.* Skinner, 3 Pick. (Mass.) 52.